

## REMARKS

The Office Action mailed January 6, 2003 has been carefully considered by the undersigned attorney on behalf of the inventors and their assignee. Claims 7, 8 and 11-13 have been canceled without prejudice or disclaimer and new Claims 22-26 are included in this Amendment. The Office Action mailed January 6, 2003, advised that new formal drawings were accepted by the Examiner and Claims 1-6, 9, 10 and 14-21 were allowed. The Examiner is thanked for both the acceptance of the new formal drawings and the allowance of these claims.

Claims 7, 8 and 11-13 were rejected under 35 USC 102(b) as being "clearly anticipated by Green et al.". In response, these rejected claims have been canceled and new Claims 22-26 have been presented. Entry of these new claims is requested in order to put the claims in better condition for allowance or appeal. It is urged that new Claims 22-26 clearly distinguish over the Green et al. reference in that the claims are directed to a stored program or method in which communication by a potential customer is directed only to merchants located in a local area at the time of the communication. Even if the Green et al. reference is capable of being used proximate to merchants, it is not limited to communicating within a proximate location as specified in new Claims 22-26..

The Examiner has suggested that the Green et al. system taught the invention of Claims 7, 8 and 11-13 by having an icon 122 to hold the order for pick-up (as described in Green's specification between Column 12, line 66 and column 13, line 2) since "In order to pick-up an order, the user would have to be proximate the merchant" and since it could be used proximate to the merchant. However, that icon and related text merely suggests that somebody may be in the vicinity of the merchant at some time (when pick-up is to occur), not that the customer is in the vicinity of the merchant when the communication occurs (called for in the newly presented claims). Further, the merchant may have a pick-up location remote from his sales and communications facility (a

warehouse or other dispensing location) and those pick-up locations are not necessarily at the place where the merchant is communicating. As a further alternative, the Green et al. system may be one in which the customer sends an agent (such as a common carrier or a delivery service) to make the pick-up so that the ordering customer need never be proximate the merchant in the Green et al. system. For example, Walmart, which orders goods from merchants near and far, offers to send a Walmart truck anywhere to pick up (perhaps because Walmart can provide transportation better, faster or at a lower cost than the merchant or a common carrier). It is thus urged that the "hold for pick up" teaching of the Green et al. patent does not teach or suggest that the customer be proximate to the merchant at the time of the communication as called for in Claims 22-26.

The newly presented claims, somewhat like the rejected Claim 7 and Claim 11, are directed to a consumer located proximate (or near) a merchant at the time of the communications where the transmitted signals have only limited range (operate within a limited geographic range). This limited range or "proximity" between the consumer and the merchant(s) is advantageous in that it permits an in-person transaction between the merchant and the consumer, but a requirement for such nearness or proximity at the time of communications is not seen in any of the prior art, including the patent to Green et al. The nearness or proximity also means that the consumer is communicating with a limited number of local merchants, not the many merchants who may offer the item which the consumer proposes to purchase.

In contrast, the system described in the prior art patent to Green et al. does not teach or suggest any geographic limitation and, in fact, envisions that communication be established from anywhere telephones or a network such as the Internet is available (see Column 4, line 61 through column 5, line 21). The merchant and the consumer in the Green et al. system could be anywhere in the world (or in "outer space", with suitable communication) and does not facilitate an in-person

transaction between the consumer and the merchant (the Green et al. patent calls its system a "remote ordering system" (emphasis added) repeatedly, e.g., in the Title, the Abstract, and at the beginning of the Field of the Invention, the Background of the Invention, and the Detailed Description, emphasizing the remoteness of the consumer and the supplier, whereas the present invention is directed to where the merchant and the consumer are relatively nearby. Thus, while the Green et al. system is a "remote ordering system", applicants' system and method are those which uses local exchange of information between a merchant and a nearby or proximate customer. The Green et al. system is presumed for communication to selected and known suppliers ("convey the list to a merchant", see Col. 4, line 42) who may or may not be within any particular geographic area, whereas the applicants' system broadcasts a particular purchase to the merchant(s), known and unknown, within a limited geographic area and then receives proposals from merchant(s) who choose to respond to a proposed transaction. As disclosed in the present application, the proximate area for communications with merchants might be a shopping mall or other area which is defined by a global positioning system or by a limited area wireless communications system with an inherent geographic limitation like the Bluetooth system. Dependent Claims 24 and 26 specifically call for a Bluetooth communication system which is not taught or suggested in the Green et al. reference, and, in fact, the Green et al. system explicitly communicates from anywhere while the claims which have not been allowed are directed to communications which are limited to a local area. Thus, in Claim 22-26, applicants have a proximate communication system (in which the customer must be proximate the merchant at the time of communication) and Green has a remote ordering system (where customer and merchant can be located wherever they can communicate).

Accordingly, it is urged that the newly-presented independent claims of applicants' patent application each define over the cited art and are therefore allowable. In addition, the

newly-presented claims which depend from these independent claims are similarly believed to be allowable by depending from independent claims which are allowable and add additional distinguishing features such as the Bluetooth local communication system which is neither taught nor suggested in any of the cited art.

Accordingly, it is urged that all of the claims presently pending in this patent application (including Claims 1 - 6, 9, 10 and 14-21 which were previously allowed and newly presented Claims 22-26) patentably differentiate the present invention from the prior art of record.

Applicants and their attorney are interested in overcoming any remaining objection to the claims, especially since most of the claims have been indicated as allowable, so that a patent may issue for this invention with all claims allowable as soon as possible. If applicants' attorney can assist the Examiner in getting this application in condition for allowance of all claims, a collect call to the undersigned is authorized at the Examiner's convenience.

It is believed that the no fee for this paper is required, given that the number of total claims and the number of independent claims has not increased from the number of claims previously paid for. However, if any additional fee is due in connection with the filing of this Amendment, including the fees for adding additional claims or for other patent application processing fees, the Patent Office is authorized to charge such fees to Deposit Account 09-0452 in the name of IBM.

Respectfully submitted,  
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